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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/333,894	06/14/1999	ARSHISH Cyrus KAPADIA	0544MH-3426	4656

7590 08/02/2004

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EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 08/02/2004

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/333,894  
Filing Date: June 14, 1999  
Appellant(s): KAPADIA ET AL.

**MAILED**

AUG 02 2004

**GROUP 3600**

\_\_\_\_\_  
Christopher W. Kennerly  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed May 3, 2004

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief (see paper number 24, Supplemental Brief)

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows: The status indicates that claim 5 has been withdrawn when in fact it has been canceled.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 1-4 and 6-43 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

6,167,383

HENSON

12-2000

Rhythm, a series of I2 Technologies web pages pulled from web.archive.org (Wayback Machine), dated 5/26/1998.

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1-4 and 6-43 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 10/30/2003.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-4 and 6-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henson in view of Rhythm (a series of pages from I2 technologies web site dated 5/26/1998).**

In regards to claims 1-4 and 6-43, Henson teaches all of the features of the instant claims except as follows:

Henson teaches a method and apparatus for configuring products over the Internet using a configurator, but does not specifically mention some of the dynamically applied optimization features from the instant claims. Rhythm teaches an order promise solution that allows the sales organization to have global visibility and allows large-scale ERP order management systems to provide accurate quotes in real time. The system allows companies to model and implement their business rules using a wide range of constraint to achieve optimization. It would be obvious to a person of ordinary skill in the art to include in Henson the optimization capabilities offered by Rhythm, because this would increase the likelihood of promised delivery dates being met and increase customer satisfaction.

**(11) Response to Argument**

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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner presented a motivation in the 10/30/2003 final office action that Henson would be motivated to include the teachings of Rhythm, "because this would increase the likelihood of promised delivery dates being met and increase customer satisfaction. Similar motivation may be found in Rhythm page 4, line 19, "Because [Rhythm] considers all the dynamic elements that determine the actual total lead time, it [Rhythm] results in an accurate, constraint based plan that forms the basis to quote reliable promise dates." Further Henson states that "with respect to the lead time delay or shipment delay indication module, a lead time delay indicator provides the customer with an indication that a particular chosen option and/or combination of options will result in a shipment delay, and may further include an indication of a certain amount of time for a delay. In other words, the shipment delay indicator provides the customer with advance notice that a particular selected option or options will result in a shipment delay. For example, a shipment delivery may be adversely affected in that the lead-time or shipment is delayed from a one-week build and delivery to five weeks" (col 7, lines 1-11).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that the combination of Henson/Rhythm does not teach “dynamically applying an optimization function with respect to each item in the selection option set”. As explained in the previous office action, this feature is shown on page 7 of the Rhythm reference under “intelligent support for interactive manual scheduling” when changes are made to the schedule such as adding options, the system dynamically applies a function to determine violations to the constraint based functions. Further, as can be seen in the Henson reference the “option set” has a function applied to it to determine if the shipment date is optimal to the customer based on the options added (col 7, lines 1-11). It should also be noted that Rhythm page 19, under “configurable to fit multiple environments” it is stated that Rhythm supports multiple environments including configure-to-order planning.

Applicant argues that the combination of Henson/Rhythm does not teach that the function is applied “according to data received from an available to promise engine during the product configuration session”. Rhythm teaches (page 4, “knowing what your supply chain can actually deliver”) an Available To Promise Engine (ATP), which is used

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to consider all the dynamic elements that determine an actual lead time, it results in an accurate, constraint based plan that forms the basis to quote reliable promise dates. Furthermore, Henson also teaches an available to promise engine, which offers a function, that checks the compatibility and the lead-time with "option sets" that are added to the configuration engine (Henson FIG 1 and 3C-5).

Applicant argues that the combination of Henson/Rhythm does not teach that the function is used "to identify an item of the selection option set as a default selection". As stated on page 19 of the Rhythm reference under "comprehensive support for both finite and infinite capacity planning", the system presents conditions that are overloads and the Rhythm's constraint based load balancing algorithms automatically create an optimal capacity constrained plan, which the examiner contends is a default selection program that automatically creates an optimally configured product based on a constraint such as delivery.

Applicant argues that the combination of Henson/Rhythm does not teach "the default selection being optimal among the one or more items of the selection option set with respect to the dynamically applied optimization function" (see Rhythm page 7 "automatic genetic algorithm-based optimization".)

Applicant argues that the combination of Henson/Rhythm does not teach

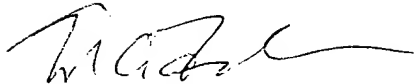


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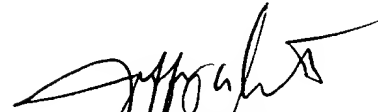
- “for each selection option set, before presenting the selection option set to the user, determining which of the items of the selection option set are actually available to the user in accordance with a user-specified date”. Rhythm teaches on page 19 that the system is capable of handling configure-to-order, make-to-order, make-to-forecast, and build-to-stock environments, and also the ability to generate accurate due-date quoting. Therefore, in order to accurately quote in an order system such as Henson the Rhythm system would check availability to assure that the product could be made in the specified time (due date).
- “and presenting only those items of the selection option set which are actually available to the user in accordance with the user-specified date constraint”. Henson teaches identifying configured items that adversely affect the delivery of the configured product (col 3), but does not specifically mention that the determination is made in accordance with a user-specified date constraint. Rhythm includes an Available To Promise engine, which as defined in an article about Rhythm, by Gary S. Vasilash, that states the available to promise engine “determines whether the goods can be delivered by the specified date.”

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Mark Fadok  
Patent Examiner  
July 22, 2004



Jeffrey A. Smith  
Primary Examiner



Conferees  
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Acting SPE 3625



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